

Remarks

This Response is in reply to the Office Action dated **July 17, 2007**.

In the Office Action, the Office rejected claims 1 – 4, 6 – 15, 30, and 33 – 40 under 35 U.S.C. 103(a), alleging the same to be unpatentable over U.S. Patent Application Publication No. 2002/0107560 to Richter (hereafter “Richter”) in view of U.S. Patent No. 5,591,223 to Lock et al (hereafter “Lock”).

The Office further alleged that the oath or declaration is defective.

Claims 41, 42, 44, and 45 were said to be allowed.

The following comments are presented in the same order and with headings corresponding to those set forth in the Office Action.

Oath/Declaration

In the Office Action, the Office alleged the Declaration to be defective. Applicants have submitted herewith a Substitute Declaration which the Applicants assert overcomes the alleged defection. Applicants note, however, that the Examiner must point out any deficiencies in the oath/declaration in the first Office Action, under MPEP § 602.03.

Claim Rejections—35 U.S.C. § 103

Claims 1 – 4, 6 – 15

The Office rejected claims 1 – 4, 6 – 15, 30, and 33 – 40 under 35 U.S.C. 103(a), alleging the same to be unpatentable over Richter in view of Lock. Applicants respectfully disagree.

“Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so.” MPEP § 2143.01, citing *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Even assuming there was some reason to combine Richter and Lock, the purported combination would still not produce the embodiment presented in claim 1. Neither Richter nor Lock teach or suggest the following limitation of claim 1: “the thickness of a portion

of the frangible temporary strut being substantially narrower than the thickness of any other portion of the frangible temporary strut.” In Richter the detachment struts are thinner or narrower than other components, [Richter, 0020], or the struts may be made of a weaker material [Richter, 0021]. Lock is silent as to the thickness of the connecting strips 22. Because neither reference teaches or suggests the above limitation, the purported combination of Richter and Lock does not produce the embodiment claimed in claim 1.

Furthermore, as stated in MPEP § 2145, “the claimed combination cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose.” The primary reference, Richter, is designed such the segments separate “under the stress placed on the stent after implementation.” [Richter, 0020]. That is, it is designed such that no balloon catheters, etc. are needed to break to the detachment struts after implementation. If Richter was combined with Lock, a balloon catheter would have to be reinserted into the body in order to break the connecting strips of Lock. Clearly, this would eliminate one of the benefits of the Richter design and change the principle of operation of Richter, in contravention of MPEP § 2145.

Therefore, in light of the above arguments, claim 1 of the present invention is nonobvious. Claims 2 – 4, 6 – 15 incorporate all the subject matter of claim 1 and add additional subject matter, making them all the more patentable over Richter and Lock. Applicants respectfully request that the rejections be removed and that claims 1 – 4 and 6 – 15 be allowed.

Claims 30, 33 – 37

For at least the reasons presented above, claim 30 is also nonobvious. Claims 33 – 37 incorporate all the subject matter of claim 30 and add additional subject matter, making them all the more patentable over Richter and Lock. Applicants respectfully request that the rejection be removed and that claims 30 – 37 be allowed.

Claim 38 – 40

For at least the reasons presented above, claim 38 is also nonobvious. Claims 38 – 40 incorporate all the subject matter of claim 38 and add additional subject matter, making them all the more patentable over Richter and Lock. Applicants respectfully request that the

rejection be removed and that claims 38 – 40 be allowed.

Allowable Subject Matter

Claims 41, 42, 44, and 45 were said to be allowed.

Conclusion

In light of the above, Applicants assert that the application is in condition for allowance. Favorable consideration and prompt action to the effect are solicited earnestly.

Should the Examiner have any questions concerning this Response, the Examiner is invited to contact the Applicants' undersigned representative at the number listed below.

Respectfully submitted,

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